

II. REMARKS

Before the amendments made herein, claims 1 to 22 were pending. Claims 3-4 and 14-21 have been canceled herein without prejudice. Claim 22 has been added. Accordingly, after the amendments made herein are entered, claims 1, 2, 5-13 and 22 will be pending.

A. Regarding the claim amendments

Claims 1, 5 and 6 have been amended to recite that the claimed polynucleotide comprises SEQ ID NOS:6 or 7 (claim 1), SEQ ID NO:11 (claim 5) or SEQ ID NO:12 (claim 6). These amendments are supported in the specification, for example, at page 6, lines 24-29, which makes clear that the polynucleotide of the invention includes (i.e., comprises) these encoding or regulatory sequences.

Claim 2 has been amended to more clearly indicate that the glycine is at position 2 of the recited erythropoietin polypeptide. This amendment is supported in the specification, for example, at page 6, lines 30-32.

Claim 12 has been amended to be directed to a cell comprising the polynucleotide of claim 1. This amendment is supported in the specification, for example, at page 3, lines 5-9.

New claim 22 is directed to the chimeric polynucleotide of claim 1, wherein said 5'-UTR sequence consists of SEQ ID NO:6 or 7. The new claim is supported in the specification, for example, at page 6, lines 21-23.

Because all of the amendments made herein are fully supported by the specification, no issue of new matter arises.

B. Regarding the specification

The specification was objected to because pages 8 and 26 contain hyperlinks. In response, the specification has been amended to inactivate these hyperlinks.

C. Regarding the claim objection

Claim 10 has been amended to include the word “and.”

D. Regarding indefiniteness

Claims 1 to 11 are rejected as allegedly indefinite. Applicant traverses the rejection.

Claims 1, 5 and 6 are rejected for reciting the phrase “as set forth.” In response, these claims have been amended to recite the word “comprising.”

Claim 2 is rejected for reciting the phrase “of SEQ ID NO:10.” In response, claim 2 has been amended to recite “position 2 of said erythropoietin polypeptide.” In turn, claim 1 makes clear that the claimed polynucleotide comprises a sequence encoding this polypeptide.

In view of the amendments made herein, Applicant respectfully requests that this rejection be withdrawn.

E. Regarding enablement

Claims 3, 4, 6, 12 and 13 are rejected as allegedly not enabled by the specification. Applicant traverses the rejection.

1. Claims 3 and 4

While Applicant respectfully disagrees with the assertions pertaining to claims 3 and 4, to promote prosecution of the subject application, claims 3 and 4 have been canceled herein without prejudice.

2. Claim 6

The Office Action alleges that the specification does not teach the coding and non-coding regions of SEQ ID NO:12. However, this is not true. The coding regions are found in SEQ ID NO:11. SEQ ID NO:12 contains all of the coding sequences of SEQ ID NO:11 plus non-coding sequences interspersed. Thus, by comparing these sequences, the skilled artisan can easily ascertain the coding and non-coding sequences. In this regard, Applicant wishes to clarify that SEQ ID NO:12 is a “genomic fragment” because it is a fragment of the entire genome, not because it is a fragment of a gene. Rather, it encodes the full gene.

Moreover, Applicants respectfully points out that Example 2 of the specification actually shows SEQ ID NO:12 being expressed at the desired level of efficiency. This expression resulted in EPO protein having the desired activity.

3. Claims 12 and 13

While Applicant respectfully disagrees with the assertions pertaining to claims 12 and 13, to promote prosecution of the subject application, claims 12 and

13 have been amended herein so as to be directed to a cell containing the polynucleotide of claim 1.

For all of these reasons, Applicant respectfully requests that this rejection be withdrawn.

F. Regarding written description

Claims 3 and 4 are rejected as allegedly not complying with the written description requirement. Applicant traverses the rejection. While Applicant respectfully disagrees with the assertions pertaining to claims 3 and 4, to promote prosecution of the subject application, claims 3 and 4 have been canceled herein without prejudice. Accordingly, withdrawal of this rejection is respectfully requested.

G. Regarding anticipation

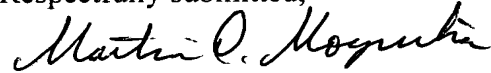
Claims 12 and 13 are rejected as allegedly anticipated by Lin et al. Applicant traverses the rejection.

Claims 12 and 13 have been amended herein so as to be directed to a cell containing the polynucleotide of claim 1. Lin et al. does not teach or suggest such a polynucleotide. Accordingly, withdrawal of this rejection is respectfully requested.

III. CONCLUSION

All of the issues raised in the Office Action have been addressed and are believed to have been overcome. Accordingly, it is respectfully submitted that all the claims under examination in the subject application are allowable. Therefore Applicants respectfully request a Notice of Allowance to this effect.

Respectfully submitted,



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Enclosed:
Petition for Extension (2 Months); and
Additional Claim Transmittal.